

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Kingwood Solar I LLC for a Certificate)	Case No. 21-0117-EL-BGN
of Environmental Compatibility and)	
Public Need)	

**MOTION FOR SUBPOENAS FOR OHIO POWER SITING BOARD STAFF TO
ATTEND AND TESTIFY AT THE ADJUDICATORY HEARING**

Pursuant to Ohio Adm.Code 4906-2-23, Kingwood Solar I LLC (the “Applicant”) respectfully moves to issue subpoenas to the following persons to appear and testify at the March 7, 2022 Adjudicatory Hearing in this matter. Explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support.

Kingwood seeks subpoenas for the followings persons to testify at the adjudicatory hearing related to the Ohio Power Siting Board (the “Board”) Staff Report of Investigation (“Staff Report”):

1. Board Staff member, Grant Zeto, Public Utilities Administrator 2, Public Utilities Commission of Ohio, who acted as project manager for this Application on behalf of Staff of OPSB;
2. Board Executive Director, Theresa White, who signed and submitted the Staff Report;
3. Board Staff member, Matt Butler, Public Utilities Administrator 3, Public Utilities Commission of Ohio, who filed the Staff Report on the public docket on behalf of Staff of OPSB;
4. the Board Staff member or members, who drafted the section titled “Considerations for R.C. 4906.10(A)(6)” on pages 40 through 44 of the Staff Report;

5. the Board Staff member or members, who decided the contents of the section titled “Considerations for R.C. 4906.10(A)(6)” on pages 40 through 44 of the Staff Report;
6. the Board Staff member or members, who determined what standard Staff should apply when considering whether the Kingwood Solar Project will serve the public interest, convenience, and necessity;
7. the Board Staff member or members, who determined that the Kingwood Solar Project “would not serve the public interest, convenience, and necessity, and therefore does not comply with the requirements specified in R.C. 4906.10(A)(6);”
8. the Board Staff member or members, who made the decision to include the recommendation in the Staff Report that the Board deny the Applicant’s request for a certificate of environmental compatibility and public need; and
9. the Board Staff member(s) or any employee of the Public Utilities Commission of Ohio, who spoke or communicated with any representative or employee of Greene County, Ohio, between October 1, 2021 and October 29, 2021, regarding the passing of a resolution related to solar development in Ohio and/or the Kingwood Solar Project.

Respectfully submitted,

/s/ Nathaniel B. Morse

Michael J. Settineri (0073369) Counsel of Record

Anna Sanyal (0089269)

Nathaniel B. Morse (0099768)

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Attorneys for Kingwood Solar I LLC

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**MEMORANDUM IN SUPPORT OF
MOTION FOR SUBPOENAS FOR OHIO POWER SITING BOARD STAFF TO
ATTEND AND TESTIFY AT THE ADJUDICATORY HEARING**

I. Introduction

Kingwood Solar I LLC (the “Applicant”) seeks a subpoena to require certain members of Staff and other designated representatives of Staff or employees of the Public Utilities Commission of Ohio to appear at the hearing in this matter. The Applicant seeks to examine such individuals on various matters related to the Staff Report of Investigation (“Staff Report”) and the scope and content of communications between the OPSB Staff and any employee of the Public Utilities Commission of Ohio with the Greene County Board of Commissioners or any representative of the Board of Commissioners. The basis for this request is more fully set forth below.

II. Background

On April 16, 2021, the Applicant filed an Application for a Certificate of Environmental Compatibility and Public Need (the “Application”) with the Ohio Power Siting Board (the “Board”) to construct a 175 megawatt (“MW”) solar-powered generating facility in Cedarville, Miami, and Xenia Townships in Greene County. Each of the townships, the Greene County Board of Commissioners, the Ohio Farm Bureau Federation, Citizens for Greene Acres along with named individuals (collectively, “CGA”), In Progress LLC, and Tecumseh Land Preservation Association intervened in the proceeding. After submitting the Application, the Applicant held informational meetings with various stakeholders.

On October 28, 2021, the Greene County Board of Commissioners passed a resolution that stated its opposition to the application for the Kingwood Solar Project. *See In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 21-0117-EL-BGN, Notice of Resolution of the Greene County Board of Commissioners in Opposition to the Kingwood Solar Application (October 29, 2021). In support, the resolution concluded that the Project application was “incompatible with the general health, safety, and welfare of the residents of Greene County.” *Id.* at 2. Counsel for the Greene County Board of Commissioners filed a copy of that resolution on the docket at 10:02 a.m. the morning of October 29, 2021.

At 4:10 p.m. on that same day, a mere six hours after that filing, Mr. Butler filed the Staff Report on the docket. *In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need*, Case No. 21-0117-EL-BGN, Staff Report of Investigation (October 29, 2021). That Staff Report included multiple references to the October 28, 2021 Greene County resolution. *See, e.g.*, Staff Report at 6, 12, 31, 42, and 44. The Staff Report also concluded that because the local government has responsibility for “preserving the health, safety, and welfare,” their opposition to the Kingwood Project is “especially compelling.” *Id.* at 44. Staff subsequently recommended not issuing a certificate for the project, determining that the facility will not serve the public interest, convenience, and necessity.

The Staff Report included other irregularities. Staff mischaracterized the public comments in the report by overstating the opposition, mischaracterized township resolutions as being in opposition to the Project and failed to consider that many of the interveners in the proceeding filed public comments, some even filed multiple comments. Additionally, the Staff Report also seemed

to overemphasize the position and opinions of local governments, in a way that deviated from the handling of such opinions in past Staff Reports.

The Adjudicatory Hearing in this case is now scheduled to begin on March 7, 2022 in a virtual format. At that hearing, the Applicant will need to better understand the analysis, reasoning, process and motivations for Staff's recommendations as well as communications with the Greene County Board of Commissioners regarding the resolution, and the requested subpoenas will ensure a complete record is developed for the Board.

III. Law and Argument

Ohio Adm.Code 4906-2-23 establishes a right for parties to obtain subpoenas for testimony at the adjudicatory hearing. The Ohio Supreme Court has explicitly affirmed that this right extends to members of the Board Staff: "If appellants desired to examine the seven [Board] staff members, they also had mechanisms available to compel their attendance. Most importantly, as parties to the certification proceeding, appellants had the ability to subpoena the staff members under Ohio Adm.Code 4906-7-08."¹ *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St. 3d 43 at 48 (2013).

The Staff Report recommendation that the Board deny the Application is central to the Applicant's development of a record upon which the Board will decide whether or not to issue a certificate in this proceeding. Understanding the analysis, reasoning, process, and motivations underlying the Board Staff's decision to recommend denial is essential. And one way to fully understand that is to speak directly with the persons involved in making that decision.

¹ The Board rules were reorganized in 2015. The version of Ohio Adm.Code 4906-7-08 in effect in 2011 during the Black Fork Wind application was reissued as Ohio Adm.Code 4906-2-23. Despite this change in numbering, the relevant text of the 2011 rule and the rule currently in effect are the same.

Therefore, the Applicant seeks to use the administrative mechanism available to compel certain Board Staff members' presence in this case. As a party to the proceeding, the Applicant wishes to subpoena members of the Board Staff as well as any designated employees of the Public Utilities Commission of Ohio to testify at the Adjudicatory Hearing. Failure to issue the subpoenas would unreasonably and prejudicially restrict the Applicant's opportunity to present a complete record for the Board.

IV. Conclusion

For the above reasons, Applicant respectfully requests that the Administrative Law Judge grant its motion for subpoenas.

Respectfully submitted,

/s/ Nathaniel B. Morse

Michael J. Settineri (0073369) Counsel of Record

Anna Sanyal (0089269)

Nathaniel B. Morse (0099768)

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Attorneys for Kingwood Solar I LLC

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being sent via electronic mail on February 25, 2022 to:

Jodi J. Bair Werner L. Margard <i>Attorneys for Ohio Power Siting Board Staff</i>	Jodi.bair@ohioattorneygeneral.gov Werner.margard@ohioattorneygeneral.gov
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Daniel A. Brown <i>Attorney for Cedarville Township Trustees</i>	dbrown@brownlawdayton.com
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David Watkins Kevin Dunn <i>Attorneys for Xenia Township Trustees</i>	dw@planklaw.com kdd@planklaw.com
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Lee A. Slone <i>Attorney for Miami Township Board of Trustees</i>	lee.slone@dinsmore.com
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John E. Hart <i>Attorney for In Progress LLC</i>	jehartlaw@gmail.com
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Charles D. Swaney <i>Attorney for Tecumseh Land Preservation Association</i>	cswaney@woh.rr.com
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Jack A. Van Kley <i>Attorney for Citizens for Greene Acres, Inc.</i>	jvankley@vankleywalker.com
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Thaddeus M. Boggs <i>Attorney for the Greene County Commissioners</i>	tboggs@fbtlaw.com
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Chad A. Endsley Leah F. Curtis Amy M. Milam <i>Attorneys for Ohio Farm Bureau Federation</i>	cendsley@ofbf.org lcurtis@ofbf.org amilam@ofbf.org
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/s/ Nathaniel B. Morse

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Public Need)	

SUBPOENA

TO: Grant Zeto, Public Utilities Administrator 2
Ohio Power Siting Board, a Division of the Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Upon application of Kingwood Solar I LLC, Grant Zeto is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

Case No. 21-0117-EL-BGN

Case Title: In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need

You are to appear via Webex virtual hearing technology at the adjudicatory hearing on the 7th day of March, 2022 at 10:00 a.m., Eastern time. You will be provided instructions to access the virtual hearing prior to this date and time.

Grant Zeto is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this ____ day of February 2022.

Administrative Law Judge

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

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SUBPOENA

TO: Theresa White, Executive Director
Ohio Power Siting Board, a Division of the Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Upon application of Kingwood Solar I LLC, Theresa White is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

Case No. 21-0117-EL-BGN

Case Title: In the Matter of the Application of Kingwood Solar I LLC for a Certificate of Environmental Compatibility and Public Need

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Theresa White is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this ____ day of February 2022.

Administrative Law Judge

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SUBPOENA

TO: Matt Butler, Public Utilities Administrator 3
Ohio Power Siting Board, a Division of the Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Upon application of Kingwood Solar I LLC, Matt Butler is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

Case No. 21-0117-EL-BGN

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Matt Butler is requested to appear at the beginning of the hearing and be available day-to-day to testify.

Dated at Columbus, Ohio, this ____ day of February 2022.

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SUBPOENA

TO: Ohio Power Siting Board Staff Member
Ohio Power Siting Board, a Division of the Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Upon application of Kingwood Solar I LLC, the Ohio Power Siting Board Staff member or members, who drafted the section titled “Considerations for R.C. 4906.10(A)(6)” on pages 40 through 44 of the Staff Report, is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

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Upon application of Kingwood Solar I LLC, the Ohio Power Siting Board Staff member or members, who determined what standard Staff should apply when considering whether the Kingwood Solar Project will serve the public interest, convenience, and necessity, is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

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Upon application of Kingwood Solar I LLC, the Ohio Power Siting Board Staff member or members, who determined that the Kingwood Solar Project “would not serve the public interest, convenience, and necessity, and therefore does not comply with the requirements specified in R.C. 4906.10(A)(6), is hereby required to appear before the Ohio Power Siting Board as a witness for Kingwood Solar I LLC in the following proceeding:

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**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

2/25/2022 12:58:25 PM

in

Case No(s). 21-0117-EL-BGN

Summary: Motion for Subpoenas for Ohio Power Siting Board Staff to Attend and
Testify at the Adjudicatory Hearing electronically filed by Nathaniel Morse on behalf
of Kingwood Solar I LLC